

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

JERRY LYNN BISBY,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO.4:07-CV-192-Y
	§	
NATHANIEL QUARTERMAN,	§	
Director, T.D.C.J.	§	
Correctional Institutions Div.,	§	
Respondent.	§	

ORDER ADOPTING, AS MODIFIED,  
MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS  
(With special instructions to the clerk of Court)

In this action brought by petitioner Jerry Lynn Bisby under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on April 24, 2007; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on May 14, 2007.

The Court, after de novo review, concludes that Petitioner's objections must be overruled, and that the motion to dismiss should be granted to the extent this action will be transferred to the United States Court of Appeals for the Fifth Circuit, for the reasons stated in the magistrate judge's findings and conclusions.

The magistrate judge recommended dismissal of this action in order for Bisby to file a motion for leave to file a successive petition in the United States Court of Appeals for the Fifth Circuit. Although it is appropriate for the Court to dismiss the successive § 2254 petition without prejudice pending review by a three-judge panel of the Fifth Circuit Court of Appeals, it is also appropriate in some


circumstances to transfer the successive petition to the Fifth Circuit for a determination of whether petitioner should be allowed to file the successive motion in the district court.<sup>1</sup> Since the entry of the magistrate judge's report, Bisby has filed a motion for authorization to file a successive habeas petition in the Court of Appeals for the Fifth Circuit in *In re Bisby*, No.07-10480. As Bisby has already filed a motion in the appellate court, it appears transfer of this case for concurrent consideration by the court of appeals is most appropriate.

Therefore, the findings and conclusions of the magistrate judge are ADOPTED, to the extent this case will be transferred to the court of appeals.

The respondent's motion to dismiss [docket no. 25] is GRANTED, to the extent this action will be transferred to the United States Court of Appeals for the Fifth Circuit.<sup>2</sup>

The instant petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 is TRANSFERRED to the United States Court of Appeals for the Fifth Circuit pursuant to *Henderson v. Haro*, 282 F.3d 862, 864 (5th Cir.2002) and *In re Epps*, 127 F.3d 364, 365 (5th Cir.1997).

SIGNED May 17, 2007.

  
TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>See *Henderson v. Haro*, 282 F.3d 862, 864 (5th Cir.2002); *In re Epps*, 127 F.3d 364, 365 (5th Cir.1997) (approving the practice of transferring a successive petition to the Circuit and establishing procedures in the Circuit to handle such transfers).

<sup>2</sup>As a result, Bisby's April 27, 2007 motion to transfer documents [docket no. 29] is DENIED as moot.